

Exemptions – Operational Policy

1. Purpose

This policy sets out how the Director uses statutory powers to grant exemptions under sections 322 and 323 of the Civil Aviation Act 2023 (the CA Act 2023). This policy outlines the decision-making principles and requirements for granting exemptions from Civil Aviation Regulations and Rules.

2. Scope

This policy applies to all exemption applications Civil Aviation Authority (CAA) receives and CAA staff who contribute to or make the decision, under delegation from the Director, whether to grant the exemption.

For CAA staff, this policy should be read alongside the [Assessment of Exemptions – Procedure](#).

3. Definitions

Applicant: any one or more aviation participants, aeronautical products, aircraft, aerodromes, aviation-related services, or other things (s 322(1) of the CA Act 2023).

Application: an application for exemption under sections 322 and 323 of the CA Act 2023.

Application requirements: the requirements an application must meet.

Assessment: the processes, methods, and activities we use to determine whether an application meets the application requirements.

Civil aviation legislation: the CA Act 2023 and any secondary legislation (regulations, rules, transport instruments) made under this Act.

Class exemption: is an exemption that is granted and applies general relief from a rule requirement to all participants, aircraft etc, that reasonably fall within a class defined in the relevant exemption.

Delegation holder: a person who holds a relevant delegation under section 460 from the Director to exercise powers under sections 322 and 323 of the CA Act 2023.

Director: the person who is the Director of Civil Aviation under section 31 of the CA Act 2023. It also includes an Acting Director appointed under section 33 and delegation holders.

Exemption requirements: the requirements for granting an exemption under sections 322 and 323 of the CA Act 2023.

Exemption Specialist: the person who is responsible for the overall management of each exemption application and provides a recommendation for the Director or delegation holder's consideration.

Individual exemption: an exemption that is granted and applies only to the participant who has submitted an application for it.

People, places, or things: any one or more aviation participants, aeronautical products, aircrafts, aerodromes, aviation-related services, or other things.

Regulation: refers to a Civil Aviation Regulation made under the CA Act 2023 for which an exemption can be applied for. None of the current Regulations expressly permits an exemption.

Rule: refers to a Civil Aviation Rule for which an exemption can be applied for and for which this policy and associated procedures apply.

Terms and conditions: the terms and conditions imposed on an exemption that the holder of an exemption must continue to satisfy for the exemption to remain valid.

4. What exemptions are

4.1 We expect applicants to comply with all relevant rules and regulations. However, sometimes this isn't possible, reasonable, or practicable. In these circumstances the Director may consider granting an exemption.

4.1.1 An exemption is the legal permission for an applicant to not comply with a particular rule or regulation requirement for a specified period of time (not exceeding five years under s 323(3)(b)). The Director may grant exemptions from compliance with one or more specified requirements in a rule or regulation (s 322(1)) made under the Act.

4.1.2 An application for exemption is a request to the Director of Civil Aviation to provide relief from any specified requirement in a rule or regulation.

5. What exemptions are for

5.1 An exemption provides relief from any specified requirements in a rule or regulation. Exemptions help to ensure our regulatory framework:

- can operate and is balanced and reasonable;
- maintains its integrity;
- helps manage risks and prevent harm;
- is flexible while maintaining safety and security standards; and
- can respond to situations where complying with a requirement may not be the best way to achieve its intended outcome.

6. Who can we grant exemptions to

6.1 The Director can grant exemptions to any:

- Individual, e.g., one or more named aviation participants, aeronautical products, aircraft, aerodromes, or aviation-related services, or other things (s 322(1)(a)); or
- class of aviation participant, aeronautical product, aircraft, aerodrome, aviation-related service, or other thing (s 322(1)(b)).

6.1.1 An exemption only applies to a specific rule or regulation requirement. Applicants must still comply with all other civil aviation legislation.

7. When we can use our exemption powers

7.1 The Director can only use the exemption powers within the limits set out in the CA Act 2023 and the relevant rules or regulations. The decision-maker uses what we know and their discretion to decide if an exemption is appropriate (e.g., an exemption will not be granted in the interest of preventing damage to our reputation as a regulator).

7.1.1 The CA Act 2023 allows applications for exemptions from regulations¹ only if the regulation expressly permits it (s 322(2)(b)). However, none of the current regulations provide for exemptions.

7.1.2 The Director considers and determines exemption applications in a way that prioritises and ensures consistency with the main purpose of the Act (a safe and secure civil aviation system). The additional purposes set out in section 4 of the CA Act 2023 must also be considered, where relevant.

7.1.3 The Director won't grant an exemption:

- where a safe and secure civil aviation system is not preserved, which is inconsistent with the main purpose of the CA Act 2023;
- where a rule specifies that no exemptions from its requirements may be granted (s 322(2)(a)); or
- from a regulation unless the regulation expressly permits exemptions (s 322(2)(b)).

8. When we may grant exemptions

8.1 The Director may grant exemptions if satisfied there's an appropriate alternative to complying with the requirement that provides a level of safety and security, or risk control, at least equivalent to that required by the existing rule.

¹ Current regulations include Civil Aviation Charges Regulations (No 2) 1991; Civil Aviation (Offences) Regulations 2006 and Civil Aviation (Safety and Security) Levies Order 2002.

- 8.1.1 As civil aviation is a dynamic sector, and individual circumstances vary, each exemption is assessed on its own merits and specific circumstances, with reference to the most up-to-date information. However, we may consider if recent exemptions with similar and relevant circumstances have been granted or rejected.
- 8.1.2 If the Director considers an individual exemption should apply to a class of aviation people, places, or things the Director may consider issuing a class exemption where appropriate.

9. Who assesses an exemption application

- 9.1 The Exemption Specialist is responsible for the overall management of each exemption application and the development of an evidence and risk-based recommendation for the Director or delegation holder's consideration.
- 9.1.1 The exemption assessment process requires technical, policy and legal evaluations and recommendations before it is presented to the Director or delegation holder.

10. Exemptions requirements

- 10.1 Applicants must explain why they need an exemption, how they'll manage risk and how they meet the exemption requirements. Exemption applications must include all information, documentation, and evidence needed to justify the proposed exemption.
- 10.2 We determine if an exemption application can be granted by assessing if it meets the following requirements defined under section 322(3) of the CA Act 2023.
- 10.2.1 **Exemptions must be no broader than reasonably necessary to address the matters that give rise to the exemption (s 322(3)(a)).**

We assess:

- which aspects of the rule it applies to, and how that rule relates to safety or security;
- the extent to which the applicant has complied with the rule requirements;
- the potential risks of granting the exemption and the actions required or proposed to mitigate them;
- the reasons why the applicant says the exemption is necessary or reasonable, or why they cannot reasonably comply with a rule requirement;
- the number of aviation participants, aeronautical products, aircraft, aerodromes, or aviation-related services the exemption would apply to; and
- the expected impact of the exemption, including any flow-on effects.

10.2.2 The Director can only grant exemptions that are consistent with the CA Act 2023's main purpose of maintaining and promoting a safe and secure civil aviation system (s 322(3)(b)).

We prioritise safety and security, and risk control, and the Director will not normally grant an exemption if it doesn't provide a level of safety and security, or risk control, that is at least equivalent to what would be achieved by complying with the rule requirement.

10.2.3 The Director may grant an exemption if that is appropriate after considering the additional purposes of the CA Act 2023; consistency with relevant international standards; and any other matter that the Director determines within their discretion (s 322(3(c))).

However, these considerations do not displace the requirement for the Director to be satisfied the exemption is consistent with the CA Act 2023's main purpose of a safe and secure civil aviation system.

11. Principles that guide our decision making

11.1 The following principles may be considered when making exemption recommendations and decisions:

11.1.1 Why compliance isn't possible, reasonable, or practicable. We assess whether there's a good reason why the applicant isn't able or shouldn't be required to comply. We know it may not always be possible, reasonable, or practicable to comply because:

- compliance with the rule requirement may not achieve best practice;
- of unforeseen circumstances outside the applicant's control;
- the rule requirement doesn't allow for the applicant's unique circumstances; or
- what is needed to comply is grossly disproportionate to the risk associated with the contravention.

11.1.2 If recent exemptions with similar and relevant circumstances have been granted or rejected.

11.1.3 If an exemption is the appropriate intervention.

11.1.4 What we know about the applicant, including:

- their circumstances and activities;
- their overall standard of aviation safety and security and risk management;
- their relevant compliance history as it relates to any conditions imposed on previous exemptions; and
- feedback from CAA inspectors, technical experts, policy, legal and other trusted sources.

11.1.5 For class exemptions, what we know about the class of participants, aeronautical products, aircraft, aerodromes, or aviation-related activities the exemption will apply to.

11.1.6 The likely impact of the exemption, including on:

- aviation safety and security;
- workers and others, such as health and safety risks;
- the applicant, such as from conditions, monitoring, and other obligations;
- the regulatory environment, such as related duties, both to the applicant and to others in the system; and
- the level of regulatory risk the exemption would pose.

11.1.7 What conditions are needed and if the conditions should (s 323(2)):

- require specific controls or actions to achieve an equivalent level of safety and security and risk control required by the existing rule;
- provide assurance that risks will be managed;
- limit the scope or period of the exemption; or
- assist us to monitor the exemption and its impacts.

11.1.8 Whether the conditions are appropriate and:

- are reasonable, proportionate, and fair for the exemption holder;
- minimise aviation safety and security risks;
- can be monitored and enforced; and
- only apply to matters within the scope of the exemption.

11.1.9 Identifying what failing to comply with a condition means, and what actions may be taken as a result. Unless the exemption expressly provides differently, non-compliance with exemption terms or conditions will be treated as a breach of the original rule (s 323(4)).

11.1.10 Applying a consistent, timely, and robust assessment process.

11.1.11 Ensuring the Director receives enough information to make informed, evidence-based, and lawful decisions. This includes technical, policy, legal, and other relevant internal advice.

12. After the decision

12.1 When the Director grants an exemption, we:

- notify the applicant and, appropriate CAA team, in writing of the outcome and forward them a copy of the exemption certificate;
- for individual exemptions, notify the number and nature of the exemption in the *Gazette* at intervals no longer than 3 months (s 322(4));
- for class exemptions, arrange for the Minister to present the exemption to the house, publish the exemption plus the reasons for granting it (s 322(6)) on the CAA website and notify the exemption in the *Gazette* (section 8(1)(a) of the Legislation (Publication) Regulations Act 2021). We also raise a rules issue assessment when appropriate; and
- monitor the exemption holder, including compliance with any terms and conditions, over the exemption's duration.

12.1.1 Class exemptions may be monitored as part of CAA's normal monitoring and inspection function. We expect aviation participants who want to use a class exemption to determine if it applies to them, and ensure they meet any terms and conditions.

13. If we become aware of new information

13.1 We may review an exemption and advise the Director whether to keep, amend, or revoke it.

13.1.1 In deciding what to do, we apply the principles in this policy, and also consider:

- what the exemption aimed to achieve, and if it's having the expected effect;
- if there've been any relevant changes (including to the rule); and
- the impact a decision may have on the exemption holder and others.

13.1.2 The Director can revoke an exemption if they believe it's no longer appropriate or necessary. When considering recommending revocation to the Director, we:

- are clear about the impacts;
- inform the exemption holder of our intention and the reason for it;
- give the exemption holder a reasonable opportunity to comment; and
- make it clear when we expect the exemption holder to comply with the requirements in the rule.

If we become aware that an exemption holder isn't complying with a term or condition, the Director may take action.

14. When we can amend or revoke an exemption

14.1 An exemption can be amended, replaced, or revoked for a range of different reasons, occurrences, and scenarios (s 323(5) of the CA Act 2023 and s 48 of the Legislation Act 2019), including but not limited to:

- the amendment or revocation of a rule;
- the Director is satisfied that the exemption no longer meets the requirements in section 322(3) of the CA Act 2023;
- the Director is satisfied the exemption holder is not complying with the terms and conditions of the exemption;
- the holder requests the exemption be amended or revoked; or
- if the applicant knowingly disclosed false or misleading information relevant to the exemption (s 362 of the CA Act 2023).

14.2 Maintaining the integrity of the exemption process is essential for ensuring civil aviation safety and security. Therefore, all exemption applicants are expected to adhere to the highest standards of honesty and transparency in their applications.

14.3 Providing false or misleading information may be considered an offence under section 362 of the CA Act 2023.

15. When an exemption ends

15.1 The Director sets an end date for each granted exemption, up to a maximum period of five years (s 323(3)(b)(ii)). Once an exemption ends, the exemption holder must comply with the requirements of the rule or apply for a new exemption. Each application is considered new, and this policy applies.

16. When the Director decides not to grant an exemption

16.1 When the Director decides not to grant an exemption, we:

- inform the applicant of the decision and the reasons for it in writing;
- monitor the situation and the applicant's compliance as appropriate; and
- consider if other interventions are necessary, including enforcement.

17. Document control

Title	Exemptions – Operational Policy
Effective date	05/04/2025
Author	Judith Fairbrother, Senior Advisor, Operational Policy
Approver	Authority Leadership Team
Quality Approver	Sarah Tetlow, Advisor Quality Systems and Assurance
Owner	John Kay - Deputy Chief Executive, System and Practice Design
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Revision	Date	Description of change
1.0	05/04/2025	New policy to reflect application of exemptions requirements and other changes in Civil Aviation Act 2023.